

Nagaraj and Another Vs. State By P.S. Rampura, Represented by the State Public Prosecutor

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Court : Karnataka

Decided On : Mar-15-2017

Judge : John Michael Cunha

Appeal No. : Criminal Petition No. 1063 of 2016

Appellant : Nagaraj and Another

Respondent : State By P.S. Rampura, Represented by the State Public Prosecutor

Judgement :

(Prayer: This CrI.P is filed u/s.482 Cr.P.C praying to quash the FIR in Cr.No.117/2014 of Srirampura P.S., pending on the file of the VII A.C.M.M., Bangalore.)

1. This petition is filed under section 482 of Cr.P.C. seeking to quash the F.I.R. in Cr.No.117/2014 of Srirampura Police Station pending on the file of VII A.C.M.M., Bengaluru.

2. The respondent Police registered the above F.I.R. on 8.4.2014 on the basis of the complaint lodged by Sri.B.L.Janardhan - the Police Officer of Srirampura Police Station. In the complaint it is alleged that the petitioners herein (accused No.1 and 2) had contested from Ward Nos.95 and 96 on independent seats and

had won the elections and were elected as Corporators. Later, petitioner No.1 had contested the M.L.A. election and lost the same. According to the complainant, petitioners herein had political grudge against Congress Party leaders and therefore, they were habituated in accusing rival political party members for every incident that took place in the locality. Petitioners had also instituted a case against the present Corporator Queen Elizabeth alleging that she has won the election after fabricating a false caste certificate. It is alleged in the complaint that on the basis of the complaints received against the petitioners, the Police are conducting a fair enquiry and have submitted reports to the Court and are maintaining law and order in the locality on the direction of superiors. Petitioner and his family members are trying to pressurize the police to prevent the police from taking action against them in cases filed against them by making false allegations against the police before political leaders. Rowdy sheet was opened against the petitioner No.1 and was deleted upon the orders of this Court. It is alleged that Cr.No.240/2013, Cr.No.243/2013, Cr.No.244/2013 and Cr.No.247/2013 and Cr.No.22/14 are pending against the petitioners. It is further alleged that in order to keep the Government servants under his thumb, petitioner No.1 has been making false and baseless allegations against the Government servants and trying to create hurdles in the work of the Government servants. It is further alleged in the complaint that petitioner No.1 used to threaten the Government servants that he along with his family will commit suicide and has also written complaints to the Government and CID. It is further alleged in the complaint that as the petitioners are making baseless allegations only to harass the complainant, police have registered a F.I.R. against the petitioners.

3. On the basis of the said allegations, the case was registered against the petitioners under section 186 and 189 of Indian Penal Code. The main contention of the petitioners is that the offences alleged against the petitioners are non-cognizable offences, and in view of section 155(2) of Cr.P.C., no Police Officer shall investigate a non-cognizable case without the order of a Magistrate. The respondent Police having not complied with the said statutory requirement, the proceedings initiated against the petitioners are illegal and without jurisdiction and hence, the petitioners have sought for quashing the impugned proceedings.

4. I have heard the learned counsel for the petitioners and the learned Addl. SPP.
5. Learned Addl. SPP, at the outset, pointed out that the permission of the learned Magistrate for investigation is obtained in the instant case on 9.4.2013 and therefore, the contention urged by the petitioners cannot be accepted and consequently, the petition is liable to be rejected.
6. To circumvent this legal hurdle, the learned counsel for the petitioners has built up an argument that the F.I.R. was registered on 08.04.2013, whereas the permission is said to have been obtained only on 09.04.2013. It is the submission of the learned counsel that as per Section of 155(2) of Cr.P.C., the requisite permission is required to be obtained prior to the registration of the F.I.R. The subsequent registration of the F.I.R. does not validate the registration of the case. In support of this argument, learned counsel has placed reliance on the decision of this Court in the case of SUDARSHAN MANCHANDA and Another vs. STATE OF KARNATAKA reported in 1979(2) KLJ 449 wherein it is held that an investigation which is started without requisite sanction or order of the jurisdictional Magistrate, as contemplated under section 155(2) of the Code of Criminal Procedure, would not be validated by an order of the Magistrate obtained subsequently.
7. Learned counsel has also placed reliance on the decision of the Hon'ble High Court of Delhi in CrI.M.C.No.6704/2006 decided on 20.12.2010 in the case of JAMAL NASIR vs. STATE and Another wherein the Hon'ble High Court of Delhi has held that registration of the case without any permission and/or direction of the Metropolitan Magistrate as envisaged under section 155(2) of Cr.P.C., which discloses commission of a non-cognizable offence is liable to be quashed.
8. In the instant case, though the petitioners have proceeded on the basis that no permission was obtained from the learned Magistrate for commencing investigation into the alleged offence, yet after having realized that such a permission has been obtained, learned counsel for the petitioners has sought to contend that subsequent grant of permission is not in accordance with law under section 155 of Cr.P.C. In other words, the thrust of the argument of the learned counsel for the petitioners is that the permission of the Magistrate has to be obtained before registration of the F.I.R. This submission, in my opinion, does not

find support either in the provisions of section 155 of Cr.P.C. or in the decisions relied on by the learned counsel for the petitioners.

9. Section 155 of Cr.P.C. reads as under:

155. Information as to non-cognizable cases and investigation of such cases.- (1) When information is given to an officer in charge of police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non- cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences, are non- cognizable.

10. A reading of sub-section (2) of section 155 of Cr.P.C. makes it clear that no police officer can investigate a non- cognizable offence without the order of the Magistrate having power to try such case or commit the case for trial. Sub-section (1) of section 155 Cr.P.C. requires the officer in charge of Police Station to enter the substance of the information in a book to be kept by such officer as may prescribed in this behalf and refer the informant to the Magistrate.

11. Explanation to section 2(d) of Cr.P.C. which defines "complaint" requires the Police Officer to submit, after investigation, a report relating to a non-cognizable offence in which case such report is to be treated as a "complaint" of the Police.

12. Coming to the facts of the present case, it is not forthcoming as to whether the information of the commission of a non-cognizable offence has been entered into

in the book kept for the said purpose as required under section 155(1) of Cr.P.C. before seeking the permission of the learned Magistrate. Going by the records placed before the Court, a F.I.R. is seem to have been registered against the petitioners for the alleged offences under sections 186 and 189 of Indian Penal Code. Undoubtedly, this F.I.R. is registered under section 154 of Cr.P.C. as if the offences alleged against the petitioners are cognizable offences. As the allegations made against the petitioners relate to the commission of non-cognizable offences, the respondent -Police could not have registered a case for such offences under section 154 of Cr.P.C. Therefore, even if the investigation has commenced after obtaining permission of the learned Magistrate, as contended by the learned Addl. SPP, in view of non-compliance of requirement of section 155(1) of Cr.P.C., the initiation of the proceedings is rendered illegal and invalid. In similar fact situation, the Hon'ble Supreme Court in the case of KESHAV LAL THAKUR vs. STATE OF BIHAR (1996) 11 SCC 557 has held that when the offence alleged against the accused is non-cognizable, the police could not have registered a case for such an offence under section 154 of Cr.P.C. and consequently, the Hon'ble Supreme Court quashed the proceedings and consequent cognizance taken by the Magistrate upon the report submitted by the Police. In the light of the proposition laid down in the above decision and for the reasons discussed above, the petition deserves to be allowed.

Accordingly, the criminal petition is allowed. The impugned F.I.R. in Cr.No.117/2014 of Srirampura Police Station pending on the file of the VII A.C.M.M., Bengaluru is quashed.

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